IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2816 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMARSANGH DHULABHAI ZADAV

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioners

GOVERNMENT PLEADER for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2, 3, 4, 5

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 07/03/2000

ORAL JUDGEMENT

1. This petition is filed against the order passed by the Mamlatdar, Karjan in Felling of Trees Case No.5 of 1996, confirmed by the Deputy Collector, Vadodara in

Appeal No.3 of 1996 as also in revision by the Government of Gujarat.

2. It was the case of the petitioners that they are the elected members of Virjai Gram Panchayat. Respondent No.4 was Sarpanch of the Panchayat against whom no confidence motion was passed in March, 1996. According to the petitioners, respondent No.4 got some branches of Baniyan trees removed without prior permission of the competent authority. The petitioners, therefore, filed an application before the Mamlatdar, Karjan which was registered as Felling of Trees Case No.5 of 1996 against the Sarpanch and other persons. The Mamlatdar by an order dated September 26, 1996 held all the persons liable observing inter alia that the petitioners were also party to the resolution and convicted under section 3(1)(b) of the Saurashtra Felling of Trees Act, 1951 (hereinafter referred to as "the Act") and imposed fine of Rs.1000/-. Being aggrieved by the above order, appeal was filed before the Deputy Collector which was dismissed and revision application also met with the same fate. The present petition is, therefore, filed against those orders.

3. The petition was admitted, rule was issued and interim relief was also granted on condition that all the petitioners deposit a sum of Rs.1000/-. Learned counsel for the petitioners stated that the said order has been complied with and the amount is deposited.

4. Two contentions were raised on behalf of the petitioners. Firstly, it was submitted that the provisions of Section 3 of the Act could not be invoked by the authority inasmuch as the resolution passed by the Panchayat did not state that without taking prior permission of the authority in accordance with law under the provisions of the Act, trees should be removed. It was submitted that it was obligatory on the part of the Sarpanch to take prior permission of the authority and only thereafter trees could have been removed. It was, therefore, submitted that the petitioners had not committed any illegality and no proceedings could have been initiated against them.

5. Secondly, it was contended that even if the petitioners can be said to be parties to the resolution and their case can be said to be covered by Section 3 of the Act, notice ought to have been issued, explanation ought to have been called for and principles of natural justice must have been observed before passing an order and imposing fine. Before the Mamlatdar, they were

applicants. They had filed a complaint which was registered as felling of trees case. In these circumstances, it was not open to the Mamlatdar without issuing notice and affording opportunity of hearing to hold the petitioners guilty. The said contention was advanced before the appellate authority as well as revisional authority, but they had also committed an error of law in rejecting the contention.

6. Mr.M.A.Bukhari, learned Assistant Government Pleader, on the other hand, supported the order passed by the authority. It was submitted that, after considering the facts and circumstances as also the resolution on record, an order was passed. All the petitioners were parties to the resolution empowering the Sarpanch and after considering the entire evidence, action was taken which was confirmed in appeal as well as in revision and the petitioners cannot make any grievance.

7. In the facts and circumstances of the case, the petition deserves to be partly allowed. So far as resolution is concerned, it is clear that it can invoke Section 3 of the Act which provides that, notwithstanding anything contained in (the Code) or in any other law for the time being in force in the State (a) no person either by himself or through any other person shall, without the written permission of the Collector or any other officer duly empowered in this behalf by the Government, voluntarily fell, appropriate or damage, or cause to be felled, appropriated or damaged, any tree, or any portion thereof.

8. But as far as notice and opportunity of hearing is concerned, prima facie, submission of the petitioners is well founded. The petitioners were applicants before the Mamlatdar. Obviously, therefore if the proceedings were to be initiated against them also, the Mamlatdar ought to have issued notice and ought to have afforded opportunity of hearing by registering a case against them. Since it was not done, the order passed by the Mamlatdar deserves to be quashed and set aside. As the original order was null and void being violative of natural justice, the order passed by the appellate authority confirming the order passed by the Mamlatdar as well as by the revisional authority confirmed by the State Government also deserve to be quashed and set aside.

9. For the foregoing reasons, the petition deserves to be allowed by quashing and setting aside the orders passed by the Mamlatdar, Deputy Collector and the State

Government. Since only on the ground of non-issuance of notice and non-affording of opportunity of hearing by registering the case against the petitioners, I am disposing of the petition, I express no opinion on merits of the matter. As and when the proceedings will be initiated by the Mamlatdar against the petitioners, it will be open to them to raise all contentions. An amount of fine deposited by the petitioners will be refunded to them. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, no order as to costs.

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(pathan)